Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	**)**	
	)	
Application by Verizon New Jersey Inc.	**)**	**CC Docket No. 01-347**
***et al.* for Authorization to Provide**	**)**	
In-Region, InterLATA Services	**)**	
in New Jersey	**)**	

REPLY COMMENTS OF CABLEVISION LIGHTPATH – NJ, INC.

Michael E. Olsen
Vice President, Legal Regulatory Strategy
Cablevision Lightpath - NJ, Inc.
1111 Stewart Avenue
Bethpage, NY 11714
(516) 803-2500

Chérie R. Kiser
James J. Valentino
Angela F. Collins
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
701 Pennsylvania Ave., N.W.
Suite 900
Washington, D.C. 20004-2608
(202) 434-7300

Its Attorneys

February 1, 2002

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Cablevision Lightpath – NJ, Inc. ("Lightpath"), by its attorneys, submits its reply comments in response to the Commission's Public Notice (DA-01-2994) in the above-captioned proceeding. For the reasons set forth herein, and for the reasons set forth in its initial comments, Lightpath opposes Verizon New Jersey Inc.'s ("Verizon's") request for long distance entry in New Jersey.

INTRODUCTION AND SUMMARY

Opposition to Verizon's request for authority to provide long distance in New Jersey among competitive carriers is unanimous.[1] Commenting carriers have provided clear evidence that Verizon's bid for entry into New Jersey's long distance telephone market is premature because Verizon has failed to comply with the requirements of the Act and has failed to open the local New Jersey telephone market to competition. As noted by Lightpath, the Ratepayer Advocate, WorldCom, AT&T, XO Communications, ATX Licensing, Covad, Z-Tel, WorldCom and MetTel, there remain a number of critical areas where Verizon's failure to comply with the Act continues to impair the advance of local competition in New Jersey, including the following checklist violations:

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[1] *See generally* Comments of AT&T Corp. ("AT&T"), Association of Communications Enterprises ("ASCENT"), ATX Licensing, Inc. ("ATX"), Cavalier Telephone Mid-Atlantic, LLC ("Cavalier"), Consolidated Edison Communications ("ConEd"), Conversent Communications ("Conversent"), Metropolitan Telecommunications ("MetTel"), Network Access Solutions ("NAS"), New Jersey Cable Telecommunications Assoc. ("NJCTA"), Sprint Communications Company, L.P. ("Sprint"), XO Communications, Inc. ("XO"), WorldCom, Inc. ("WorldCom"), Z-Tel Communications, Inc. ("Z-Tel"), and Cablevision Lightpath – NJ, Inc. ("Lightpath").

- **Checklist Item 1 – Interconnection (single point of interconnection)**

  Rule – Section 251(c)(2) of the Act requires Verizon to permit a CLEC to interconnect "at any technically feasible point" within Verizon's network. This means that a CLEC has the option to interconnect at only one technically feasible point in each LATA. *See, e.g., Texas 271 Order*, at ¶ 78, nn.173-173; *Pennsylvania 271 Order*, at n.345.

  Reality – Verizon requires competitive carriers to physically interconnect at multiple points within a LATA.[2]

- **Checklist Item 13 – Reciprocal Compensation (Transport and Termination)**

  Rule – 47 C.F.R. § 51.703

  (a) Each LEC shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting telecommunications carrier.

  (b) A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network.

  Reality – Verizon has not demonstrated that it will refrain from imposing transport charges for the delivery of its traffic originating on its side of the network to the common interconnection point.[3]

- **Checklist Item 13 – Reciprocal Compensation (Tandem Rate Rule)**

  Rule – "Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate." 47 C.F.R. § 51.711(a)(3)

  Reality – Verizon has not demonstrated that it will compensate Lightpath at the tandem reciprocal compensation rate for terminating Verizon-originated calls at Lightpath's switch that serves the same geographic area as three Verizon tandems combined.[4]

Despite the heavy burden that Verizon bears to prove to the Commission that it has complied, the comments of competitive carriers and the Ratepayer Advocate make

[2] Lightpath at 5-10; AT&T at 29-32.

[3] Lightpath at 10-12; AT&T at 29-32.

[4] Lightpath at 12-13.

clear that Verizon has refused to cure or adequately address multiple checklist deficiencies.[5] In particular, Verizon has refused – and continues to refuse -- to meet its obligations to provide interconnection (checklist item 1) and reciprocal compensation (checklist item 13) in a manner conforming to the law.[6] In addition, contrary to the Board's statement in its Report to the Commission that the arbitration proceeding between the parties has mooted any further discussion of noncompliance with these checklist items,[7] that proceeding is not final because no order has been issued and Lightpath has been given no assurances or indication that Verizon intends to comply with the new interconnection agreement. Moreover, as noted by Conversent,[8] Verizon continues to play sleight of hand with its failure to comply with the obligation to provide nondiscriminatory access to network elements, pointing to the New Jersey Board's *UNE Rate Orde*r but disregarding the fact that Verizon has yet to make dark fiber available for CLECs in a nondiscriminatory manner.

In its evaluation, the United States Department of Justice ("DOJ") stated that it did not "believe there are any material non-price obstacles to competition" and attributed the "low level of CLEC penetration of residential markets in New Jersey" to historical, rather than current, UNE pricing.[9] Regardless of the merits of the Board's recent *UNE Rate Order*, which established new UNE rates on December 17, 2001,[10] lower UNE rates on a going-forward basis will not resolve the fact that Verizon's anticompetitive

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5 In addition to the checklist items noted above, commentors have presented evidence that Verizon has not demonstrated compliance with several other checklist items. *See, e.g.*, AT&T at 7-23 (UNE rates, OSS); ASCENT at 1-7 (hot cuts - non-recurring costs); Conversent at 1-6 (hot cuts - non-recurring costs); ATX at 13-28 (UNE-P and OSS); MetTel at 4-15 (OSS); XO at 3-21 (unbundled loops, reciprocal compensation, directory listing); WorldCom at 5-13 (UNE rates); ConEd at 2-15 (dark fiber).

6 Lightpath at 5-12; AT&T at 29-32.

7 *See* Consultative Report of the New Jersey Board of Public Utilities ("Board Report") at 18.

8 Conversent at 2-15.

9 *See* Evaluation of the United States Department of Justice, at 5-6 (filed Jan. 28, 2002)("DOJ Evaluation").

10 *In the Matter of the Board's Review of Unbundled Network Elements, Rates, Terms and Conditions of Bell Atlantic New Jersey, Inc.,* BPU Docket No. TO00060356 (Summary Order rel. Dec. 17, 2001, final order pending).

interconnection practices in New Jersey are designed to keep facilities-based competitors from entering the local market. Moreover, in its Report to the Commission, the Board claims that the lack of residential facilities-based competition in New Jersey is largely due to the CLECs' "business Decisions."[11] The real issue, however, is what prompts such business decisions. The explanation is quite simple. Full-service, facilities-based carriers, such as Lightpath, face considerable non-price obstacles that prevent true facilities-based carriers from providing local residential service in New Jersey.[12] Until Verizon's anticompetitive practices are curbed, the residential facilities-based market in New Jersey will continue to suffer and the Commission's and the Board's desire to develop facilities-based competition will remain unrealized.

Verizon's failure to comply with federal law, combined with the overwhelming evidence that New Jersey consumers suffer from the lowest level of residential local service competition of any state where Verizon has sought to enter the long distance market,[13] compel a finding to reject Verizon's application until such time as Verizon has truly and irreversibly opened its local market to competition in New Jersey.

ARGUMENT

I. VERIZON'S UNLAWFUL INTERCONNECTION AND RECIPROCAL COMPENSATION PRACTICES ARE DIRECTLY RELEVANT TO THE SECTION 271 PROCESS

Lightpath has shown that Verizon cannot demonstrate compliance with checklist item 1 (interconnection) and checklist item 13 (reciprocal compensation) because Verizon refuses to offer CLECs nondiscriminatory interconnection at any technically feasible point and attempts to frustrate CLECs' rights to just and reasonable reciprocal compensation.[14] In its Report to the Commission, the Board indicates that it believes

[11] Board Report at 8.
[12] Lightpath at 18-20.
[13] Lightpath at 15-20; *see also* Ratepayer Advocate at 16-20, 26-33.
[14] Lightpath at 5-13.

Lightpath's issues concerning Verizon's interconnection and reciprocal compensation checklist obligations have been "addressed" in an arbitrated proceeding.[15] While the Arbitrated Interconnection Agreement is currently in effect, Verizon has objected to the findings contained in the Arbitration Award, suggesting that Verizon has no intention of complying with the terms of the Agreement. Unfortunately, because the Board has not issued its Order approving the Parties' Arbitrated Interconnection Agreement and a billing cycle has not concluded since the announcement of the Board's decision, it is uncertain what Verizon's intentions are regarding compliance with its interconnection and reciprocal compensation competitive checklist obligations set forth under law and the agreement. The indication by Verizon, however, is that it does not intend to comply.[16]

In addition, on reply, Verizon will, no doubt, contend that the Commission should ignore Lightpath's issues because any issue raised in an arbitration dispute must necessarily be "irreconcilable" to the section 271 process.[17] This argument is wrong for several reasons.

First, and foremost, Verizon's *continuing and current* conduct violates checklist items 1 and 13. Pursuant to Section 51.703(b) of the Commission's rules, Verizon "may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on its side of the network to the common interconnection point."[18] The interconnection agreements between Verizon and Lightpath also set forth this same

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[15] Board Report at 18.

[16] As Lightpath indicated in its initial comments, Lightpath was forced to litigate interconnection arrangements, which it is clearly entitled to under the law. Lightpath at 7, n.12. While Lightpath ultimately prevailed and the interconnection agreement is currently in effect, Verizon signed the agreement under protest. BPU Docket No. TO01080498, In the Matter of the Petition of Cablevision Lightpath – NJ, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish and Interconnection Agreement with Verizon New Jersey Inc., Letter from Bruce D. Cohen, Verizon Counsel, to Henry M. Ogden, Acting Secretary, Board of Public Utilities (dated Jan. 7, 2002) (Attachment 1).

[17] *See Consultative Report on the Application of Verizon New Jersey Inc. for Authorization to Provide In-Region InterLATA Service in New Jersey*, BPU Docket No. TO001090541, Verizon Br. at 3-4 (filed Dec. 7, 2001).

[18] 47 C.F.R. § 51.703(b).

well-settled obligation.[19] Thus, pursuant to federal law and consistent with Lightpath's interconnection agreements with Verizon, Verizon is currently prohibited from assessing transport charges on Lightpath for the delivery of Verizon's telecommunications traffic that originates on Verizon's side of the network to the common interconnection point.[20] Despite this clear obligation, Verizon has not demonstrated that it will refrain from charging Lightpath for the transport of traffic on Verizon's side of the interconnection point. Moreover, despite the fact that Lightpath is entitled to the tandem reciprocal compensation rate pursuant to the terms of the Arbitrated Interconnection Agreement and the well-settled tandem rate rule;[21] there is no evidence that Verizon intends to comply with its obligation to provide Lightpath with the tandem reciprocal compensation rate. Thus, Verizon has not – and cannot – demonstrate that it is currently complying with the FCC's existing interconnection and reciprocal compensation rules.

Second, Verizon's interconnection and reciprocal compensation practices, which *continued after Verizon filed its 271 application with the Commission*, are directly relevant to a determination of checklist compliance or noncompliance. Because Verizon has refused to recognize a CLEC's interconnection arrangements or reciprocal compensation arrangements that conform to Commission rules, Verizon is in violation of

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[19] *See* Arbitrated Interconnection Agreement, section 4.1.3 (stating that "the Terminating Party is responsible for the transport and termination of traffic from the IP to its Customers"). The current Arbitrated Interconnection Agreement between Lightpath and Verizon went into effect on January 7, 2002. *See* Interconnection Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996 by and between Verizon New Jersey Inc. f/k/a Bell Atlantic-New Jersey, Inc. and Cablevision Lightpath - NJ, Inc. for the State of New Jersey (Jan. 7, 2002) ("Arbitrated Interconnection Agreement"). *See also* Interconnection Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996 by and between Bell Atlantic-New Jersey, Inc. and Cablevision Lightpath - NJ, Inc. for the State of New Jersey, section 4.1.3 (same) (dated Oct. 13, 1998).

[20] *See id*.; see also 47 C.F.R. § 51.703(b).

[21] Arbitrated Interconnection Agreement, Exhibit A, Section B (indicating that Lightpath receives the tandem reciprocal compensation rate for all traffic delivered to the CLI-IP at or below the 3:1 ratio); *see also* 47 C.F.R. § 51.711(a).

checklist items 1 and 13 of the Act. The rules on interconnection and the tandem rate rule are quite clear.[22] Verizon has ignored those rules for the better part of a year.[23]

Where, as here, Verizon's actions involve *per se* violations of the Act and the FCC's implementing rules, those actions are directly relevant to a determination of noncompliance with the section 271 checklist.[24] Thus, Verizon's refusal to make arrangements that permit Lightpath the ability to interconnect "at any technically feasible point" and its attempt to unlawfully charge Lightpath for transport of Verizon's traffic on Verizon's own network demonstrate that Verizon is not in compliance with checklist item 1 and checklist item 13.[25] Likewise, Verizon's refusal to pay Lightpath the tandem reciprocal compensation rate for Lightpath's transport and termination of Verizon's call to Lightpath's customer demonstrates noncompliance with checklist item 13.[26]

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[22] *See* 47 U.S.C. § 251(c)(2); 47 C.F.R. § 51.305(a); 47 C.F.R. § 57.711(a)(3); *see also Developing a Unified Intercarrier Compensation Regime,* 16 FCC Rcd 9610 ¶ 112 (2001) ("*Unified Intercarrier Compensation NPRM*") ("[A]n ILEC must allow a requesting telecommunications carrier to interconnect at any technically feasible point, including the option to interconnect at a single POI per LATA."(citations omitted)); *Application of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, 15 FCC Rcd 18354, at ¶ 78 (2000) ("*SBC Texas 271 Order*") ("Section 251, and [the FCC's] implementing rules, require an incumbent LEC to allow a competitive LEC to interconnect at any technically feasible point. This means that a competitive LEC has the option to interconnect at only one technically feasible point in each LATA.") (establishing that competitive carriers are due tandem rates when their switches "serve[ ] a geographic area comparable to the area served by the incumbent LEC's tandem switch"); *TSR Wireless, LLC v. US WEST Comm., Inc.*, Memorandum Opinion and Order, FCC 00-194 ¶ 34 (rel. June 21,2000) ("The *Local Competition Order* requires a carrier to pay the cost of facilities used to deliver traffic originated by that carrier to the network of its co-carrier, who then terminates that traffic and bills the originating carrier for termination compensation"), *aff'd by Qwest Corp. v. FCC*, 252 F.3d 462 (D.C. Cir. 2001).

[23] Lightpath at 6-8.

[24] *SBC Texas 271 Order*, at ¶ 22 (there is an independent obligation to ensure compliance with all terms of the competitive checklist, and "those terms generally incorporate by reference the core local competition obligations that sections 251 and 252 impose on all incumbent LECs"); *see also Application of Verizon Pennsylvania et al. for Authorization to Provide In-Region, InterLATA Services in* Pennsylvania, 16 FCC Rcd. 17419, at ¶ 118 ("*Pennsylvania 271 Order*").

[25] *See* Lightpath at 5-12.

[26] *See* Lightpath at 12-13.

Verizon's unlawful actions cannot escape section 271 scrutiny because they were initially raised in the context of an arbitration proceeding. The FCC has said that the section 271 process is not the forum for resolving:

> new and unresolved interpretive disputes about the precise content of an incumbent LEC's obligations to its competitors, disputes that [the FCC's] rules have not yet addressed and that do not involve per se violations of self-executing requirements of the Act.[27]

The FCC's language is clear: an ILEC may not avoid scrutiny in the Section 271 process of clear violations of well-settled law.[28] Verizon must be compelled through arbitration to provide interconnection and reciprocal compensation in accordance with well-settled law, which compels a finding of noncompliance, not compliance, with checklist items 1 and 13. Unless and until Verizon demonstrates that it will furnish interconnection and reciprocal compensation in compliance with the law, long distance authority may not be granted.

II. VERIZON HAS NOT COMPLIED WITH ITS OBLIGATION TO PROVIDE NONDISCRIMINATORY ACCESS TO UNBUNDLED NETWORK ELEMENTS

In order to comply with checklist item 2 and checklist item 4, Verizon must provide "nondiscriminatory access to network elements in accordance with sections 251(c)(3) and 252(d)(1)" of the Act.[29] The Board contends that its *UNE Rate Order*,

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[27] *SBC Texas 271 Order*, at ¶ 23; *see also id.* ¶¶ 24-27.

[28] At most, the Commission's 271 orders establish a bright line distinction between real interconnection "disputes" that involve unsettled areas of the law (which the FCC has found is outside 271 scrutiny) and interconnection and reciprocal compensation practices that constitute a blatant disregard of well-established law. The latter tactic is directly relevant to a determination of checklist noncompliance because it demonstrates that Verizon does not "generally offer" interconnection and reciprocal compensation pursuant to the Act and the FCC's rules. As noted in Section III, it is also relevant to the Commissions public interest inquiry.

[29] *See* 47 U.S.C. § 271(c)(2)(B)(ii).

which is a "summary order" establishing new UNE rates, resolves any issue of noncompliance with Verizon's obligation to provide access to unbundled network elements at nondiscriminatory rates, terms, and conditions in compliance with section 251(c)(3) and checklist items 2 and 4.[30] The *UNE Rate Order*, however, does not –- and cannot – demonstrate whether Verizon actually provides "nondiscriminatory access to network elements on an unbundled basis at any technically feasible point under rates, terms, and conditions that are just, reasonable, and nondiscriminatory" in compliance with section 251(c)(3).[31] In fact, Verizon does not provide UNEs in compliance with section 251(c)(3) and, therefore, cannot demonstrate checklist compliance with either checklist items 2 or 4.

For example, in the December 17, 2001 *UNE Rate Order*, the Board found Verizon's dark fiber offering to be deficient and required that Verizon modify its dark fiber terms and conditions. In particular, the Board ordered Verizon to permit CLECs to: (1) route dark fiber through intermediary central offices and (2) provide cross connects at intermediate wire centers.[32] Despite the fact that the *UNE Rate Order* required Verizon to come into immediate compliance with these provisions, Verizon has yet to do so. On December 21, 2001, Verizon proposed dark fiber terms and conditions for adoption in the Lightpath arbitration proceeding that explicitly violate the requirements of both the New Jersey *UNE Rate Order* and federal law.[33] Similarly, the template interconnection

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[30] *See* Board Report at 49 (finding that Cablevision's claims that Verizon does not offer competitors nondiscriminatory access to critical network elements that facilities-based carriers need, such as dark fiber and EELs, has been "decided in [its] recent UNE decision and are not ripe for discussion here.")

[31] 47 U.S.C. § 251(c)(3).

[32] *UNE Rate Order* at 11.

[33] Compare *NJ UNE Rate Order* at 11 with Lightpath/Verizon Arbitration Proceeding, VZ Proposed UNE Language (relevant excerpts attached as Attachment 2) (for example, Verizon proposed language that: (1) used the term "continuous" to define dark fiber despite the fact that the Board required Verizon to eliminate all references to "continuous" in describing dark fiber; and (2) limited the availability of dark

agreement language that Verizon currently offers in New Jersey does not comply with the terms and conditions set forth in the New Jersey *UNE Rate Order* and section 251(c)(3).[34] Accordingly, until Verizon evidences its intent to comply with state and federal law, it cannot demonstrate compliance with section 271 requirements.

III. THE INITIAL COMMENTS PROVIDE FURTHER SUPPORT THAT VERIZON'S REQUESTED ENTRY INTO THE LONG DISTANCE MARKET IS NOT IN THE PUBLIC INTEREST AT THIS TIME.

The Commission may not approve BOC entry into the long distance market without first concluding that the requested authorization is "consistent with the public interest, convenience, and necessity."[35] The Commission views the public interest requirement as an opportunity to "ensure that no other factors exist that would frustrate the congressional intent that markets be [and remain] open."[36] In New Jersey, there are a number of Verizon-imposed "factors" (*i.e.,* barriers to entry) that currently prevent facilities-based carriers from providing local residential service in New Jersey. Unless and until Verizon removes these barriers, Verizon's requested entry into the long distance market cannot be in the public interest.

For example, in its initial comments, Lightpath demonstrated that Verizon's interconnection practices keep facilities-based competitors from entering the New Jersey local market.[37] The Board concedes that facilities-based residential competition is

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fiber in a discriminatory manner, thus defeating the Board's requirement that Verizon eliminate the term "spare" to define dark fiber and the requirement that Verizon must provide "specific details" each time a CLEC's dark fiber request is rejected). In addition, Verizon's proposed restrictions on dark fiber terms and conditions (*see, e.g*. Attachment 2) would unlawfully limit a carrier's use of dark fiber in a manner inconsistent with the requirement that Verizon provide dark fiber at "any technically feasible point." 47 U.S.C. 251(c)(3). As Lightpath explained in its initial comments, Verizon provides access to its UNE terms and conditions through interconnection agreements with carriers.

[34] The language that Verizon proposed (unsuccessfully) in the interconnection arbitration proceeding is substantially similar to the template language it proposes for all carriers.

[35] 47 U.S.C. 271(d)(3)(C).

[36] *See, e.g., Application of Verizon New England Inc. et al. for Authorization to Provide In-Region, InterLATA Services in Massachusetts, 16 FCC Rcd. 8988,* at ¶ 233 (2001).

[37] Lightpath at 18-20.

virtually nonexistent,[38] adding force to the argument that any of the concerns discussed above that the Commission decides not to treat as checklist violations must, at a minimum, be considered as part of the public interest analysis. Verizon's bad faith approach to negotiations and ceaseless litigation also should be given significant weight in the public interest analysis.

The Board has indicated that the "low level of [CLEC] residential market share" in New Jersey did not merit delaying Verizon's entry in the long distance market because the Board has taken the necessary steps to ensure that the local market in New Jersey is – and will remain – open to competition.[39] While the Board must be recognized for the work that it has done, and continues to do, to encourage the development of local competition, the steps taken to date will not prevent the routine checklist violations outlined above. First, the Board's actions, regardless of their merits, do not constitute a demonstration of compliance with section 271 by Verizon. Only Verizon can demonstrate compliance with the checklist and the public interest, and it has not done so. Faith alone is insufficient to support a finding that the public interest will be served by supporting Verizon's application because approval will ultimately spur competitors to enter the local market.[40] Local competition must precede Verizon's entry into the long distance market.[41] This is especially true where, as here, Verizon has successfully thwarted competitive entry into the local market for almost six years.

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[38] Board Report at 8, 86.

[39] Board Report at 8, 86.

[40] *See* Board Report at 8.

[41] *See In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region InterLATA Services in Michigan*, 12 FCC Rcd 20543, ¶ 388 (1997) ("*Ameritech Michigan 271 Order*") ("Section 271, however, embodies a congressional determination that, in order for this potential to become a reality, local telecommunications markets must *first* be open to competition so that a BOC cannot use its control over bottleneck local exchange facilities to undermine competition in the long distance market. Only then is the other congressional intention of creating an incentive or reward for opening the local exchange market met") (emphasis added).

Second, neither the Board's Report nor the DOJ's Evaluation address the fact that Verizon's interconnection practices in New Jersey are designed to keep facilities-based competitors from entering the local market. The evidence relied upon by the Board[42] and the DOJ[43] does not address the fact that Verizon's anticompetitive interconnection and reciprocal compensation practices prevent true facilities-based carriers, such as Lightpath, from providing local residential service in New Jersey. Until Verizon's anticompetitive practices are curbed, the residential facilities-based market in New Jersey will continue to suffer and the FCC's desire to develop facilities-based competition will remain unrealized.

Third, the Board's finding that the lack of residential facilities-based competition in New Jersey is due to the CLECs' "business Decisions" is unsupported and unsupportable.[44] This is exactly the type of analysis that the D.C. Circuit flatly rejected when it stated that the public interest standard could not be given the "brush-off" by unsupported presumptions that attempt to explain away the lack of residential competition in a state.[45] As Lightpath explained in its initial comments, the dismal level of local residential competition, particularly the *de minimis* number of competitive, facilities-based residential lines in New Jersey is the direct result of Verizon's failure to comply with critical components of the section 271 checklist.[46] Verizon should not be permitted to reap the benefits of entering the long distance market without having complied with the prerequisite obligation to open the New Jersey local telephone market to competition.

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42 *See* Board Report at 8 (claiming that evidence that carriers provide some facilities-based business services in New Jersey must necessarily lead to the conclusion that "the fact that they do not also provide facilities-based service to residential customers is a business Decision on their part.")

43 *See* DOJ Evaluation at 5-6 (attributing low levels of residential competition to historically high UNE rates).

44 Board Report at 86.

45 *Sprint Communications Co. L.P. v. FCC et al.*, No. 01-1076 at 5 (D.C. Cir. 2001).

46 Lightpath at 18-20.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in Lightpath's Initial Comments, Verizon has failed to demonstrate that it complies with the section 271 prerequisites necessary for support of its New Jersey long distance entry application.

Respectfully submitted,

CABLEVISION LIGHTPATH - NJ, INC.

/s/ Chérie R. Kiser

Michael E. Olsen
Vice President, Legal Regulatory Strategy
Cablevision Lightpath - NJ, Inc.
1111 Stewart Avenue
Bethpage, NY 11714
(516) 803-2500

Chérie R. Kiser
James J. Valentino
Mintz, Levin, Cohn, Ferris, Glovsky
and Popeo, P.C.
701 Pennsylvania Ave., N.W.
Suite 900
Washington, D.C. 20004-2608
(202) 434-7300

Its Attorneys

February 1, 2002

WDC 307280v5

CERTIFICATE OF SERVICE

I, Margaret D. Davis, do hereby certify that copies of the foregoing Reply Comments of Cablevision Lightpath – Inc. were served on the following by either U.S. First Class Mail or hand delivery* this 1st day of February, 2002.

/s/ Margaret D. Davis
Margaret D. Davis

By Electronic Filing:
William S. Caton, Acting Secretary
Office of the Secretary
Federal Communications Commission
445 12th St., SW
Room TW-B204
Washington, DC 20554

Twelve copies:
*Janice Myles
Policy and Program Planning Division, CCB
Federal Communications Commission
RE: CC Docket No. 01-347
445 12th St., SW
Room 5-C327
Washington, DC 20554

*Kyle Dixon
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

*Matthew Brill
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

*Jordan Goldstein
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

*Sam Feder
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

*Dorothy Attwood
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

*Michelle Carey
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

*Deena Shetler
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

*Alex Johns
Policy & Program Planning Division
Common Carrier Bureau
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

*Susan Pie
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

*Rodney McDonald
Jeremy Miller
Josh Swift
Rob Tanner
Common Carrier Bureau
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

US Department of Justice
Antitrust Division, TTF
Attn: David Arulanantham
1401 H Street NW, Suite 8000
Washington, DC 20005

Bruce D. Cohen
Verizon New Jersey, Inc.
540 Broad Street
Newark, NJ 07102
via Federal Express

Anthony Centrella, Director
Board of Public Utilities
Division of Telecommunications
Two Gateway Center
Newark, NJ 07102

Karen Nations
Regulatory Director
XO Communications
45 Eisenhower Drive, 5th Floor
Paramus, NJ 07652

Francis R. Perkins, Esq.
Meyner & Landis
One Gateway Center
Newark, NJ 07102

Carol Artale
Legal Specialist
Board of Public Utilities
Two Gateway Center
Newark, NJ 07102

James H. Laskey, Esq.
Norris, McLaughlin & Marcus
721 Route 202-206
P.O. Box 1018
Somerville, NJ 08076-1018

Chana Wilkerson, Esq.
MCI WorldCom, Inc.
1133 19th Street, N.W., 4th Floor
Washington, DC 20036

Frederick C. Pappalardo
AT&T Communications of NJ, L.P.
295 North Maple Avenue
Room 3133C2
Basking Ridge, NJ 07920

Blossom A. Peretz, Director
Lawanda R. Gilbert, Esq.
Division of Ratepayer Advocate
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101

Antony R. Petrilla, Esq.
Susan Jin Davis, Esq.
Covad Communications Company
600 14th Street, N.W.
Washington, DC 20005

Eric J. Branfman
Swidler Berlin Shereff Friedman
3000 K Street. NW, Suite 300
Washington, DC 20007

Evan T. Leo
Kellogg, Huber, Hansen, Todd &
Evans, P.L.L.C.
Sumner Square
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
via Federal Express

Michael Clancy
Director of ILEC Relations
Covad Communications
149 Margaret Boulevard
Merrick, NY 11566

Jonathan E. Canis
Kelley Drye & Warren LLP
1200 19th Street, NW
Fifth Floor
Washington, DC 20036

Michael E. Glover
Verizon
1515 North Court House Road
Suite 500
Arlington, Virginia 22201
via Federal Express

Marybeth M. Banks
H. Richard Juhnke
Sprint Communications Company L.P.
401 9th Street, NW
Suite 400
Washington, DC 20004

Keith L. Seat
WorldCom, Inc.
1133 19th Street, NW
Washington, DC 20036

Rodney L. Joyce
Network Access Solutions Corp.
13650 Dulles Technology Drive
Herndon, VA 20171

Anna Sokolin-Maimon
Metropolitan Telecommunications
44 Wall Street, 14th Floor
New York, NY 10005

Stephen T. Perkins
Alan M. Shoer
Cavalier Telephone
2134 West Laburnum Avenue
Richmond, VA 23227

Patrick J. Donovan
Swidler Berlin Shereff Friedman
3000 K Street. NW, Suite 300
Washington, DC 20007

Nancy M. Goodman
Laury E. Bobbish
John M. Lynch
Katherine E. Brown
J. Parker Erkmann
U.S. Department of Justice, Antitrust Division
1401 H Street, NW, Suite 8000
Washington, DC 20530

Catherine M. Hannan
Hunter Communications Law Group
1424 16th Street, NW
Suite 105
Washington, DC 20006